

The Senate Committee on Insurance and Labor offered the following substitute to HB 99:

A BILL TO BE ENTITLED
AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide for modernization and updates; to amend various provisions for purposes of conformity; to extensively revise Chapter 41, relating to captive insurance companies; to provide for definitions; to provide for the use of a registered agent to receive service of process; to provide for sponsored captive insurance companies; to provide for letters of credit; to provide for filings and notifications to the Commissioner; to provide for effective dates; to provide for establishment and maintenance of protected cells; to provide for certain protected cell requirements at the discretion of the Commissioner; to provide for authority; to provide for conservation, rehabilitation, or liquidation requirements and exceptions; to provide for applicability of the Special Insurance Fraud Fund; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by revising Code Section 33-40-21, relating to rules, as follows:

"33-40-21.

~~The Commissioner may establish and from time to time amend such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of this chapter.~~ Reserved."

SECTION 1-2.

Said title is further amended by revising Code Section 33-41-20.1, relating to membership of captive insurance companies in Georgia Insurers Insolvency Pool, as follows:

"33-41-20.1.

(a) ~~On and after January 1, 2008, every~~ Every association and industrial insured captive insurance company issuing workers' compensation insurance contracts shall become a member of the Georgia Insurers Insolvency Pool under Chapter 36 of this title as to workers' compensation only. Such captive insurance companies shall be liable for assessments pursuant to Code Section 33-36-7 and for all other obligations imposed pursuant to Chapter 36 of this title as to workers' compensation only.

(b) Except as provided for in Code Section 33-36-20, the Georgia Insurers Insolvency Pool shall not be liable for any claims incurred by any captive insurance company before January 1, 2008."

SECTION 1-3.

Said title is further amended by revising Code Section 33-42-3, relating to applicability of chapter, as follows:

"33-42-3.

The requirements of this chapter shall apply to long-term care insurance policies issued, delivered, or issued for delivery in this state ~~on or after July 1, 1988~~. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable provisions of this title insofar as they do not conflict with this chapter, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance. A policy which is not advertised, marketed, or offered as long-term care insurance need not meet the requirements of this chapter."

SECTION 1-4.

Said title is further amended by revising Code Section 33-42-4, relating to definitions, as follows:

"33-42-4.

As used in this chapter, the term:

(1) 'Applicant' means:

(A) In the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits; and

(B) In the case of a group long-term care insurance policy, the proposed certificate holder.

(2) 'Certificate' means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

(3) ~~'Commissioner' means the Commissioner of Insurance of this state.~~

59 ~~(4)~~(3) 'Group long-term care insurance' means a long-term care insurance policy which
60 is issued, delivered, or issued for delivery in this state and issued to:

61 (A) Any eligible group as defined in Code Section 33-30-1; or

62 (B) A group other than as described in Code Section 33-30-1, subject to a finding by
63 the Commissioner that:

64 (i) The issuance of the group policy is not contrary to the best interest of the public;

65 (ii) The issuance of the group policy would result in economies of acquisition or
66 administration; and

67 (iii) The benefits are reasonable in relation to the premiums charged.

68 ~~(5)~~(4) 'Long-term care insurance' means any accident and sickness insurance policy or
69 rider advertised, marketed, offered, or designed primarily to provide coverage for not less
70 than 12 consecutive benefit months or which provides coverage for recurring
71 confinements separated by a period not to exceed six months with a minimum aggregate
72 period of one year for each covered person on an expense incurred, indemnity, prepaid,
73 or other basis, for one or more necessary or medically necessary diagnostic, preventive,
74 therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting
75 other than an acute care unit of a hospital. Such term includes group and individual
76 accident and sickness policies or riders whether issued by insurers, fraternal benefit
77 societies, health care plans, health maintenance organizations, or any other similar
78 organizations. Long-term care insurance shall not include any accident and sickness
79 insurance policy which is offered primarily to provide basic medicare supplement
80 coverage, basic hospital expense coverage, basic medical-surgical expense coverage,
81 hospital confinement indemnity coverage, major medical expense coverage, disability
82 income protection coverage, catastrophic coverage, comprehensive coverage, accident
83 only coverage, specified disease or specified accident coverage, or limited benefit health
84 coverage. Long-term care insurance may be provided through an individual or group life
85 insurance policy by attachment of a long-term care rider or by the automatic inclusion of
86 a long-term care provision which, notwithstanding Code Section 33-42-3, must meet the
87 requirements of this chapter and regulations promulgated by the Commissioner. Any
88 such long-term care riders or policy provisions shall not be exempt from filing
89 requirements and must be filed with the department for approval before being used in this
90 state.

91 ~~(6)~~(5) 'Policy' means any policy, contract, or subscriber agreement or any rider or
92 endorsement attached thereto, issued, delivered, issued for delivery, or renewed in this
93 state by an insurer, fraternal benefit society, health care plan, health maintenance
94 organization, or any other similar organization. Such term shall also include a Georgia
95 Qualified Long-term Care Partnership Program approved policy, as defined in paragraph

96 (4) of Code Section 49-4-161, meeting the requirements of the Georgia Qualified
97 Long-term Care Partnership Program as enacted in subsection (a) of Code Section
98 49-4-162."

99 **SECTION 1-5.**

100 Said title is further amended by revising Code Section 33-42-5, relating to group policy
101 issued in another state, as follows:

102 "33-42-5.

103 No group long-term care insurance coverage may be offered to a resident of this state under
104 a group policy issued in another state to a group described in subparagraph (B) of
105 paragraph (4)(3) of Code Section 33-42-4 unless this state or another state having statutory
106 and regulatory long-term care insurance requirements substantially similar to those adopted
107 in this state has made a determination that such requirements have been met."

108 **SECTION 1-6.**

109 Said title is further amended by revising Code Section 33-42-7, relating to regulations, as
110 follows:

111 "33-42-7.

112 ~~Regulations adopted pursuant to this chapter shall be in accordance with the provisions of~~
113 ~~Chapter 2 of this title. Reserved.~~"

114 **SECTION 1-7.**

115 Said title is further amended in Code Section 33-43-2, relating to applicability of chapter, by
116 revising subsection (a) as follows:

117 "(a) Except as otherwise specifically provided, this chapter shall apply to:

118 (1) All medicare supplement policies delivered or issued for delivery in this state ~~on or~~
119 ~~after July 1, 2000~~; and

120 (2) All certificates issued under group medicare supplement policies, which certificates
121 have been delivered or issued for delivery in this state."

122 **SECTION 1-8.**

123 Said title is further amended in Code Section 33-43-3, relating to duplicate benefits
124 prohibited and establishment of standards, by revising subsection (h) as follows:

125 "(h) Persons may enroll in a medicare supplement policy at any time authorized or required
126 by the federal government or within six months of:

- (1) Enrolling in medicare Part B ~~or by May 1, 2011~~, for an individual who is under 65 years of age and is eligible for medicare because of disability or end-stage renal disease, whichever is later;
- (2) Receiving notice that such person has been retroactively enrolled in medicare Part B due to a retroactive eligibility decision made by the Social Security Administration; or
- (3) Experiencing a qualifying event identified in regulations adopted pursuant to subsection (c) of this Code section."

SECTION 1-9.

Said title is further amended by repealing Chapter 44, relating to High Risk Health Insurance Plan, and designating said chapter as reserved.

SECTION 1-10.

Said title is further amended by revising Code Section 33-45-7.1, relating to provider authorized to offer continuing care when resident purchases owned living unit, as follows:

"33-45-7.1.

A provider which has obtained a certificate of authority pursuant to Code Section 33-45-5 and the written approval of the ~~commissioner~~ Commissioner is authorized to offer, as a part of the continuing care agreement, continuing care at home or continuing care in which the resident purchases a resident owned living unit, subject to the provisions of Chapters 6 and 7 of Title 31 and rules and regulations promulgated by the Department of Community Health pursuant to such chapters relating to certificate of need and licensure requirements."

SECTION 1-11.

Said title is further amended in Code Section 33-45-11, relating to maintaining financial reserves and requirements, by revising subsection (b) as follows:

"(b) A provider or facility which has opened but not yet achieved full occupancy, as defined by its lender or financing documents, if any, or 95 percent occupancy of its residential units; or a provider or facility that has received a certificate of authority and has been in conformance with the provisions of this chapter ~~prior to July 1, 2011~~, shall be required to achieve the level of financial reserves required by subsection (a) of this Code section as follows:

- (1) The provider or facility shall submit a plan to the Commissioner the terms of which assure that the provider or facility shall maintain sufficient progress to achieving the level of financial reserves required by this Code section; and
- (2) The plan demonstrates that the provider or facility is substantially likely to achieve the required level of financial reserves within five years of opening ~~or for existing~~

161 ~~facilities that received a certificate of authority and have been in conformance with the~~
162 ~~provisions of this chapter prior to July 1, 2011, within five years of July 1, 2011. For~~
163 ~~purposes of this paragraph, the term 'substantially likely' means a provider or facility shall~~
164 ~~meet the level of financial reserves required by paragraph (1) of this subsection (a) of this~~
165 ~~Code section~~ at a minimum rate of 20 percent per year as of the end of each fiscal year
166 ~~after the later of the date the facility opens or July 1, 2011, up to a total of 100 percent as~~
167 ~~of the end of the fifth fiscal year."~~

168 SECTION 1-12.

169 Said title is further amended in Code Section 33-50-5, relating to minimum surplus, capital
170 requirements, security deposit, annual audit, aggregate excess stop-loss coverage, and
171 individual excess stop-loss coverage, by revising subsections (e), (f), and (i) as follows:

172 "(e) Every multiple employer self-insured health plan licensed pursuant to this chapter
173 shall have an annual audit by an independent certified public accountant in accordance with
174 Georgia Insurance Department of Insurance Regulation 120-2-60 and instructions
175 prescribed by the National Association of Insurance Commissioners.

176 (f) Every multiple employer self-insured health plan shall file financial statements with the
177 Commissioner in accordance with the provisions of Georgia Insurance Department of
178 Insurance Regulation 120-2-18-.06."

179 ~~"(i) A multiple employer self-insured health plan licensed before January 1, 2010, shall~~
180 ~~have until December 31, 2011, to comply with the provisions of this Code section.~~
181 ~~Reserved."~~

182 SECTION 1-13.

183 Said title is further amended by revising Code Section 33-50-13, relating to date when filings
184 due, as follows:

185 "33-50-13.

186 All multiple employer self-insured health plans who have member employees in this state
187 ~~as of July 1, 1991, shall have until October 1, 1991, to make all filings necessary to comply~~
188 ~~with this chapter."~~

189 SECTION 1-14.

190 Said title is further amended in Code Section 33-51-3, relating to development of guidelines,
191 promotion by Commissioner, and authority of Commissioner, by revising subsection (e) as
192 follows:

193 ~~"(e) The Commissioner shall be authorized to promulgate such rules and regulations as he~~
194 ~~or she deems necessary and appropriate for the design, promotion, and regulation of health~~

~~savings account eligible high deductible plans, including rules and regulations for the expedited review of standardized policies, advertisements and solicitations, and other matters deemed relevant by the Commissioner. Reserved."~~

SECTION 1-15.

Said title is further amended by revising Code Section 33-53-1, relating to definitions, as follows:

"33-53-1.

As used in this chapter:

~~(1) 'Commissioner' means the Commissioner of Insurance of the State of Georgia.~~

(2)(1) 'Drug' means a drug or biologic that is used in an antineoplastic regimen.

~~(3)~~(2) 'Insurance policy' means an individual accident and sickness policy of insurance issued pursuant to Chapter 29 of this title or a group accident and sickness insurance policy issued pursuant to Chapter 30 of this title.

~~(4)~~(3) 'Standard reference compendium' means any of the following:

(A) The United States Pharmacopeia Drug Information;

(B) The American Medical Association Drug Evaluations;

(C) The American Hospital Formulary Service Drug Information."

SECTION 1-16.

Said title is further amended by revising Code Section 33-53-3, relating to enforcement, as follows:

"33-53-3.

~~The Commissioner is authorized to enforce the provisions of this chapter. Reserved."~~

SECTION 1-17.

Said title is further amended in Code Section 33-54-2, relating to definitions, by revising paragraph (2) as follows:

"(2) 'Insurer' means an insurer, a fraternal benefit society, ~~a nonprofit medical service corporation~~, a health care corporation, a health maintenance corporation, or a self-insured health plan not subject to the exclusive jurisdiction of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq."

SECTION 1-18.

Said title is further amended in Code Section 33-55-1, relating to insurers to report acquisitions and dispositions of assets and material changes to ceded reinsurance agreements to Commissioner, by revising subsection (b) as follows:

"(b)(1) The report required in subsection (a) of this Code section is due within 15 days after the end of the calendar month in which any of the covered transactions occur.

(2) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with:

(A) The Commissioner of Insurance; and

(B) The National Association of Insurance Commissioners."

SECTION 1-19.

Said title is further amended by revising Code Section 33-56-9, relating to chapter supplemental to other laws and exemption for certain domestic property and casualty insurance, as follows:

"33-56-9.

(a) The provisions of this chapter are supplemental to any other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the Commissioner under such laws, including, but not limited to, Chapters 2, 3, 13, 14, 18, 19, 20, 21, and 37 of this title.

~~(b) The Commissioner may adopt reasonable rules necessary for the implementation of this chapter.~~

~~(c)~~(b) The Commissioner may exempt from the application of this chapter any domestic property and casualty insurer which:

(1) Meets all three of the following criteria:

(A) Writes direct business only in this state;

(B) Writes direct annual premiums of \$2 million or less; and

(C) Assumes no reinsurance in excess of 5 percent of direct premium written; or

(2) Demonstrates to the satisfaction of the Commissioner by other means that preparation and submission of an RBC report would create an unusual and unnecessary hardship or would result in a report which is ambiguous or misleading based upon the unique nature of the company's product offerings or financial structure.

~~(d)~~(c) The Commissioner may exempt from the application of this chapter any health organization which:

(1) Has less than 1,000 covered lives; and

(2) Has less than \$1 million in direct written premiums."

SECTION 1-20.

Said title is further amended by revising Code Section 33-56-11, relating to immunity of Commissioner and department, as follows:

"33-56-11.

There shall be no liability on the part of, and no cause of action shall arise against, the Commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter."

SECTION 1-21.

Said title is further amended by revising Code Section 33-56-12, relating to severability, and designating said Code section as reserved, as follows:

"33-56-12.

~~In the event any section, subsection, sentence, clause, or phrase of this chapter shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this chapter, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part of this chapter. The General Assembly declares that it would have passed the remaining parts of this chapter if it had known that such part or parts of this chapter would be declared or adjudged invalid or unconstitutional. Reserved.~~"

SECTION 1-22.

Said title is further amended in Code Section 33-58-4, relating to notice of annuity to Commissioner, by revising subsection (a) as follows:

"(a) A charitable organization that issues qualified charitable gift annuities shall notify the Commissioner in writing by the ~~later of October 1, 2000, or the date on which it enters into~~ the organization's first qualified charitable gift annuity agreement. The notice shall:

(1) Be signed by an officer or director of the organization;

(2) Identify the organization; and

(3) Certify that:

(A) The organization is a charitable organization; and

(B) The annuities issued by the organization are qualified charitable gift annuities."

SECTION 1-23.

Said title is further amended in Code Section 33-59-11, relating to required documents and information, confidentiality, seller's right to rescind, escrow proceedings, failure to tender consideration, and limitation on contracts with the insured for the purpose of determining the insured's health status, by revising subsection (f) as follows:

"(f) If a life settlement broker performs those verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of subsection (a) of Code Section ~~33-5-9~~ 33-59-9."

SECTION 1-24.

Said title is further amended by revising Code Section 33-59-12, relating to promulgation of regulations and determining governing law when multiple owners, as follows:

"33-59-12.

~~(a) The Commissioner may promulgate regulations implementing this chapter and regulating the activities and relationships of providers, life settlement brokers, insurers, and their agents subject to statutory limitations on administrative rule making.~~

~~(b)(1)~~(a) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

~~(2)~~(b) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which he or she is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the Commissioner.

~~(3)~~(c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws."

SECTION 1-25.

Said title is further amended by revising Code Section 33-59-18, relating to transacting business permitted while the provider's license application is pending, as follows:

"33-59-18.

~~(a) A provider lawfully transacting business in this state prior to July 1, 2009, may continue to do so pending approval or disapproval of that person's application for a license so long as the application is filed with the Commissioner not later than 30 days after~~

~~publication by the Commissioner of an application form and instructions for licensure of providers. If the publication of the application form and instructions is prior to July 1, 2009, then the filing of the application shall not be later than August 1, 2009. During the time that such an application is pending with the Commissioner, the applicant may use any form of life settlement contract that has been filed with the Commissioner pending approval thereof, provided that such form is otherwise in compliance with the provisions of this chapter. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this chapter.~~

~~(b) A person who has lawfully negotiated life settlement contracts between any owner residing in this state and one or more providers for at least one year immediately prior to July 1, 2009, may continue to do so pending approval or disapproval of that person's application for a license so long as the application is filed with the Commissioner not later than 30 days after publication by the Commissioner of an application form and instructions for registration of life settlement brokers. If the publication of the application form and instructions is prior to July 1, 2009, then the filing of the application shall not be later than August 1, 2009. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this chapter. Reserved."~~

SECTION 1-26.

Said title is further amended by revising Code Section 33-60-2, relating to legislative intent, as follows:

"33-60-2.

The General Assembly recognizes the need for employers and individuals in this state to have the opportunity to choose among group and individual health insurance plans that are more affordable and flexible than standard market policies of accident and sickness insurance and the need to increase the availability of health insurance coverage by authorizing the transaction of this type of plan or policy by accident and sickness insurers licensed to transact business in this state. This chapter shall require insurers which provide major medical coverage to offer policies that contain all state mandated health benefits as well as policies that contain the limited selection of state mandated health benefits set forth in Code Section 33-60-3; provided, however, that, ~~on and after July 1, 2005~~, employees in group plans or individuals may choose pursuant to this chapter among new health insurance plans offered by insurers that either include all state mandated health benefits or include the limited state mandated health benefits set forth in Code Section 33-60-3."

SECTION 1-27.

Said title is further amended in Code Section 33-60-3, relating to definitions, by revising paragraph (3) as follows:

"(3) 'Insurer' means any insurer or nonprofit organization authorized to sell accident and sickness policies, subscriber contracts, certificates, or agreements of any form under Chapters 15, ~~18, 19~~, 20, 21, 29, and 30 of this title."

SECTION 1-28.

Said title is further amended in Code Section 33-60-4, relating to requirements for insurers and employers, sale by health maintenance organizations permitted, and purchase of additional coverage permitted, by revising subsections (a) and (b) as follows:

"(a) Notwithstanding any other provision of law ~~and on and after July 1, 2005~~:

(1) Any insurer authorized to transact business in this state offering group accident and sickness policies or contracts shall be required to offer, through a licensed agent or agency, a group health benefit plan that contains all state mandated health benefits and may offer a group alternative health benefit plan as defined in this chapter; and

(2) Any insurer authorized to transact business in this state offering individual accident and sickness policies or contracts shall be required to offer, through a licensed agent or agency, an individual health benefit plan that contains all state mandated health benefits and may offer an individual alternative health benefit plan as defined in this chapter.

(b) ~~On and after July 1, 2005, an~~ An employer who chooses to offer group health benefit plans to its employees shall offer to each eligible employee a group health benefit plan that contains all state mandated health benefits and may offer to each eligible employee a group alternative health benefit plan as defined in this chapter."

SECTION 1-29.

Said title is further amended in Code Section 33-60-5, relating to required notice and acknowledgment, by revising subsection (b) as follows:

"(b) An acknowledgment separate from the notice and application provided for in subsection (a) of this Code section shall be provided to and completed by each individual policyholder or individual group member. Such acknowledgment shall contain a comparison of the benefits contained in each of the health benefit plan options being offered to the individual policyholder or individual group member. ~~The Commissioner shall promulgate such rules and regulations as he or she deems necessary to implement this subsection including rules and regulations concerning the form and contents of such acknowledgment.~~ In the case of group health benefit plans being offered by an employer,

396 a copy of the acknowledgment for each individual group member shall be maintained by
397 the employer."

398 **SECTION 1-30.**

399 Said title is further amended by revising Code Section 33-60-6, relating to authority of the
400 Commissioner with respect to this chapter, as follows:

401 "33-60-6.

402 ~~The Commissioner of Insurance may promulgate rules and regulations as necessary to~~
403 ~~implement the provisions of this chapter and specify the information to be contained on the~~
404 ~~forms supplied by insurers of these policies and contracts to individual group members and~~
405 ~~policyholders. Reserved.~~"

406 **SECTION 1-31.**

407 Said title is further amended in Code Section 33-61-1, relating to definitions, by revising
408 paragraph (3) as follows:

409 "(3) ~~'Commissioner' shall mean the Commissioner of Insurance of the State of Georgia.~~
410 Reserved."

411 **SECTION 1-32.**

412 Said title is further amended by revising Code Section 33-63-1, relating to legislative
413 findings, as follows:

414 "33-63-1.

415 The General Assembly finds that guaranteed asset protection waivers are not insurance.
416 All guaranteed asset protection waivers issued on or after the date of enactment of this
417 chapter shall not be construed as insurance."

418 **SECTION 1-33.**

419 Said title is further amended by revising Code Section 33-63-9, relating to Commissioner of
420 Insurance to enforce provisions and penalty for violations, as follows:

421 "33-63-9.

422 ~~The Commissioner of Insurance~~ may take action which is necessary or appropriate to
423 enforce the provisions of this chapter and to protect guaranteed asset protection waiver
424 holders in this state. After proper notice and opportunity for hearing, the ~~commissioner~~
425 Commissioner may:

426 (1) Order the creditor, administrator, or any other person not in compliance with this
427 chapter to cease and desist from further guaranteed asset protection waiver related
428 operations which are in violation of this chapter; and

(2) Impose a penalty of not more than \$500.00 per violation and not more than \$10,000.00 in the aggregate for all violations of a similar nature. For purposes of this paragraph, violations must be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice which is determined to be a violation of this chapter occurred."

SECTION 1-34.

Said title is further amended by revising Code Section 33-64-1, relating to definitions, as follows:

"33-64-1.

As used in this chapter, the term:

(1) 'Business entity' means a corporation, association, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity.

~~(2) 'Commissioner' means the Commissioner of Insurance.~~

~~(3)~~(2) 'Covered entity' means an employer, labor union, or other group of persons organized in this state that provides health coverage to covered individuals who are employed or reside in this state.

~~(4)~~(3) 'Covered individual' means a member, participant, enrollee, contract holder, policy holder, or beneficiary of a covered entity who is provided health coverage by a covered entity.

~~(5)~~(4) 'Health system' means a hospital or any other facility or entity owned, operated, or leased by a hospital and a long-term care home.

~~(6)~~(5) 'Maximum allowable cost' means the per unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and copayments, coinsurance, or other cost-sharing charges, if any.

~~(7)~~(6) 'Pharmacy' means a pharmacy or pharmacist licensed pursuant to Chapter 4 of Title 26 or another dispensing provider.

~~(8)~~(7) 'Pharmacy benefits management' means the service provided to a health plan or covered entity, directly or through another entity, including the procurement of prescription drugs to be dispensed to patients, or the administration or management of prescription drug benefits, including, but not limited to, any of the following:

(A) Mail order pharmacy;

(B) Claims processing, retail network management, or payment of claims to pharmacies for dispensing prescription drugs;

(C) Clinical or other formulary or preferred drug list development or management;

(D) Negotiation or administration of rebates, discounts, payment differentials, or other incentives for the inclusion of particular prescription drugs in a particular category or to promote the purchase of particular prescription drugs;

(E) Patient compliance, therapeutic intervention, or generic substitution programs; and

(F) Disease management.

~~(9)~~(8) 'Pharmacy benefits manager' means a person, business entity, or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity. The term does not include services provided by pharmacies operating under a hospital pharmacy license. The term also does not include health systems while providing pharmacy services for their patients, employees, or beneficiaries, for indigent care, or for the provision of drugs for outpatient procedures. The term also does not include services provided by pharmacies affiliated with a facility licensed under Code Section 31-44-4 or a licensed group model health maintenance organization with an exclusive medical group contract and which operates its own pharmacies which are licensed under Code Section 26-4-110."

SECTION 1-35.

Said title is further amended in Code Section 33-64-2, relating to license requirements and filing fees, by revising subsection (l) as follows:

"(l) A pharmacy benefits manager operating as a line of business or affiliate of a health insurer, health care center, ~~hospital service corporation, medical service corporation,~~ or fraternal benefit society licensed in this state or of any affiliate of such health insurer, health care center, ~~hospital service corporation, medical service corporation,~~ or fraternal benefit society shall not be required to obtain a license pursuant to this chapter. Such health insurer, health care center, ~~hospital service corporation, medical service corporation,~~ or fraternal benefit society shall notify the Commissioner annually, in writing, on a form provided by the Commissioner, that it is affiliated with or operating as a line of business as a pharmacy benefits manager."

PART II

SECTION 2-1.

Said title is further amended by designating the existing provisions of Chapter 41, relating to captive insurance companies, as Article 1.

SECTION 2-2.

Said title is further amended by revising Code Section 33-41-2, relating to definitions, as follows:

"33-41-2.

Terms not defined in this chapter shall have the same meaning ascribed to them in this title.

As used in this chapter, unless the context otherwise requires, the term:

(1) 'Affiliate' means any person in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) 'Agency captive insurance company' means:

(A) Any domestic insurance company granted a certificate of authority pursuant to this chapter that is owned or controlled by an insurance agency, brokerage, managing general agent, or reinsurance intermediary, or an affiliate thereof, or under common ownership or control with such agency, brokerage, managing general agent, or reinsurance intermediary, and that only reinsures the risk of insurance or annuity contracts placed by or through such agency, brokerage, managing general agent, or reinsurance intermediary; or

(B) Any domestic insurance company granted a certificate of authority pursuant to this chapter that is owned or controlled by a marketer, producer, administrator, issuer, or provider of service contracts or warranties and that only reinsures the contractual liability arising out of such service contracts or warranties sold through such marketer, producer, administrator, issuer, or provider.

(3) 'Association' means any membership organization whose members consist of a group of individuals, corporations, partnerships, or other entities or associations who engage in similar or related professional, trade, or business activities and who collectively own, control, or hold with power to vote all of the outstanding voting interests of an association captive insurance company or of a person that is the sole shareholder of an association captive insurance company.

(4) 'Association captive insurance company' means any domestic insurance company granted a certificate of authority pursuant to this chapter to insure or reinsure the similar or related risks of members and affiliates of members of its association.

(5) 'Captive insurance company' means any pure captive insurance company, association captive insurance company, agency captive insurance company, industrial insured captive insurance company, sponsored captive insurance company, or risk retention group captive insurance company.

(6) 'Controlled unaffiliated business' means:

(A) Any person:

- (i) That is not in the corporate system of a parent and its affiliated companies;
- (ii) That has an existing contractual relationship with a parent or one of its affiliated companies; and
- (iii) Whose risks are managed by a ~~pure~~ captive insurance company in accordance with this chapter and approved by the Commissioner; or

(B) A reinsurance ~~pooling~~ arrangement with other captive insurance companies that is approved by the Commissioner.

(7) 'Dormant captive insurance company' means a captive insurance company that:

(A) Has ceased transacting the business of insurance, including the issuance of insurance policies; and

(B) Has no remaining liabilities associated with insurance business transactions, or insurance policies issued prior to the filing of its application for a certificate of dormancy pursuant to this chapter.

~~(7)~~(8) 'Formation documents' means articles of incorporation, if the captive insurance company or the prospective captive insurance company is a stock insurer, stock corporation, or a mutual insurer, or articles of organization, if the captive insurance company or the prospective captive insurance company is a limited liability company, and any amendments or restatements of the same. For purposes of this term, an incorporated protected cell, as defined in Article 2 of this chapter, shall be included in the definition of 'captive insurance company.'

~~(8)~~(9) 'Industrial insured' means an insured:

(A) Who procures the insurance of any risk or risks through the use of the services of a full-time employee who acts as an insurance manager, risk manager, or insurance buyer or through the services of a person licensed as a property and casualty agent, broker, or counselor in such person's state of domicile;

(B) Whose aggregate annual premiums for insurance on all risks total at least \$25,000.00; and

(C) Who either:

- (i) Has at least 25 full-time employees;
- (ii) Has gross assets in excess of \$3 million; or
- (iii) Has annual gross revenues in excess of \$5 million.

~~(9)~~(10) 'Industrial insured captive insurance company' means any domestic insurance company granted a certificate of authority pursuant to this chapter to insure or reinsure the risks of industrial insureds and their affiliates and which has as its shareholders or members only industrial insureds that are insured or reinsured by the industrial insured captive insurance company or which has as its sole shareholder or sole member an entity

whose only owners are industrial insureds that are insured or reinsured by the industrial insured captive insurance company.

~~(10)~~(11) 'Mutual insurer' means an incorporated insurer without capital stock or shares that is owned and governed by its policyholders.

~~(11)~~(12) 'Parent' means an entity which directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the total outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock corporation; or

(B) Membership interests of a pure captive insurance company organized as a limited liability company.

~~(12)~~(13) 'Pure captive insurance company' means any domestic insurance company granted a certificate of authority under this chapter to insure or reinsure the risks of its parent and affiliates of its parent, and controlled unaffiliated business.

~~(13)~~(14) 'Risk retention group captive insurance company' is any domestic insurance company ~~which has been~~ granted a certificate of authority pursuant to this chapter and determined by the Commissioner to be established and maintained as a 'risk retention group' as defined under the federal Liability Risk Retention Act of 1986, as amended. ~~A risk retention group may be chartered and licensed pursuant to this chapter or pursuant to Chapter 40 of this title.~~

~~(14)~~(15) 'Stock insurer' means an incorporated insurer with capital divided into shares and owned by its shareholders.

~~(15)~~(16) 'Transact,' as used in this chapter, shall not include the organizational activities associated with the preliminary formation, incorporation, petitioning for a certificate of authority, and initial capitalization of a captive insurance company."

SECTION 2-3.

Said title is further amended in subsection (c) of Code Section 33-41-3, relating to permissible business and limitations, by revising paragraph (1) as follows:

"(1) A captive insurance company shall not insure ~~or reinsure~~ any risks resulting from:

(A) Any personal, familial, or household responsibilities; or

(B) Activities other than risks resulting from responsibilities arising out of any business, whether profit or nonprofit; trade; product; services, including professional or fiduciary services; or commercial premises or commercial operations;"

SECTION 2-4.

Said title is further amended in Code Section 33-41-4, relating to prerequisites to transacting insurance, by revising paragraphs (3) and (4) and adding a new paragraph to read as follows:

"(3) Any organization providing the principal administrative or management services to such captive insurance company shall be approved by the Commissioner; ~~and~~

(4) Its board of directors or board of managers holds at least one meeting each year in this state; and

(5) It appoints a registered agent to accept service of process in this state, provided that, whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served."

SECTION 2-5.

Said title is further amended in Code Section 33-41-5, relating to incorporation, by revising subsection (a) and by adding new subsections to read as follows:

"(a) For purposes of this Code section, an incorporated protected cell, as defined in Article 2 of this chapter, shall be included in the definition of 'captive insurance company.'

~~(a)(a.1)~~(1) A pure captive insurance company or an agency captive insurance company may be incorporated as a stock insurer or organized as a manager-managed limited liability company.

(2) An association captive insurance company, an industrial insured captive insurance company, a sponsored captive insurance company, or a risk retention group captive insurance company may be incorporated as a stock insurer, incorporated as a mutual insurer, or organized as a manager-managed limited liability company.‡

~~(A) Incorporated as a stock insurer;~~

~~(B) Incorporated as a mutual insurer; or~~

~~(C) Organized as a manager-managed limited liability company."~~

"(h) The effective date of each document set forth in this Code section, including but not limited to formation documents, amendments to formation documents, merger documents, conversion documents, and dissolution documents shall be:

(1) The date on which the document is filed with the Commissioner; or

(2) A date specified by the Commissioner, which shall not precede the date on which the document was filed with the Commissioner."

SECTION 2-6.

Said title is further amended by revising subsections (a) through (c) of Code Section 33-41-8, relating to amount of capital or surplus, as follows:

"(a) The amount of minimum capital or surplus required for each captive insurance company shall be determined on an individual basis, however:

- (1) A pure captive insurance company shall maintain at least \$250,000.00 in surplus;
- (2) An association captive insurance company shall maintain at least \$500,000.00 in surplus;
- (3) An agency captive insurance company shall maintain at least \$250,000.00 in surplus;
- (4) An industrial insured captive insurance company shall maintain at least \$500,000.00 in surplus; ~~and~~
- (5) A risk retention group shall maintain at least \$500,000.00 in surplus; and
- (6) A sponsored captive insurance company shall maintain at least \$250,000.00 in surplus.

The Commissioner may require additional capital or surplus of any captive insurance company in an amount he or she deems appropriate under the circumstances based on the captive insurance company's business plan as described in ~~paragraph (2) of subsection (a) of Code Section 33-41-10.~~ Additional capital or surplus may be required if the captive insurance company's business plan indicates that an increase is required in order for the captive insurance company to meet its contractual obligations to its policyholders or to maintain its solvency.

(b) Minimum capital or surplus of up to \$500,000.00 shall be maintained in any of the following:

- (1) Cash;
- (2) Certificates of deposit or similar certificates or evidences of deposits in banks or trust companies but only to the extent that the certificates or deposits are insured by the Federal Deposit Insurance Corporation;
- (3) Savings accounts, certificates of deposit, or similar certificates or evidences of deposit in savings and loan associations and building and loan associations but only to the extent that the same are insured by the Federal Savings and Loan Insurance Corporation; or
- (4) ~~Promissory notes or other obligations of shareholders secured by one or more letters of credit, as described in~~ One or more letters of credit, so long as they are in conformance with Code Section 33-41-9.

~~(c) One hundred thousand dollars of the minimum capital or surplus of an~~ Each association captive insurance company, ~~an industrial insured captive insurance company, or a~~ and risk retention group captive insurance company must ~~be deposited~~ deposit with the state prior to the issuance of a certificate of authority."

SECTION 2-7.

Said title is further amended by revising subsection (a) of Code Section 33-41-9, relating to letters of credit, as follows:

675 "(a) Any letter of credit used to meet the requirements set forth in ~~Code Sections 33-41-8,~~
676 ~~33-41-12, and 33-41-14~~ this chapter shall be:
677 (1) Clean, irrevocable, and unconditional;
678 (2) Issued by a bank approved by the Commissioner, which is either a bank chartered by
679 the State of Georgia or a national bank which is a member of the Federal Reserve System;
680 (3) Presentable and payable within the State of Georgia; and
681 (4) Provided in conformity with any other requirements established by the
682 Commissioner."

683 **SECTION 2-8.**

684 Said title is further amended by revising subsections (b) and (d) of Code Section 33-41-10,
685 relating to application for and issuance of certificate of authority, as follows:

686 "(b) In determining whether to approve an application for an original or renewal certificate
687 of authority to a captive insurance company, the Commissioner shall examine the
688 applicable items submitted to him or her pursuant to ~~subsections (a), (e), and (f)~~ of this
689 Code section. The Commissioner may rely upon and accept the reports of independent
690 agents who may include licensed insurance counselors, brokers, agents, or adjusters
691 discussed under Chapter 23 of this title, certified actuarial consultants, certified public
692 accountants, risk managers, and examiners of insurance companies in order to facilitate his
693 or her examination of the application for a certificate of authority by a captive insurance
694 company. The expenses and charges of such independent agents shall be paid directly by
695 the captive insurance company."

696 "(d) Pursuant to Code Section 33-3-15, if the Commissioner is satisfied that the documents
697 and statements filed by the captive insurance company in its application for a certificate of
698 authority comply with the provisions of this chapter, the Commissioner shall promptly
699 issue a certificate of authority authorizing the captive insurance company to transact
700 insurance in this state until the thirtieth day of June thereafter. The effective date of such
701 certificate of authority shall be:

702 (1) The date on which the Commissioner is satisfied that the documents and statements
703 filed by the captive insurance company in its application for a certificate of authority
704 comply with the provisions of this chapter; or
705 (2) A date specified by the Commissioner, which shall not precede the date on which the
706 application for a certificate of authority was first filed with the Commissioner."

707 **SECTION 2-9.**

708 Said title is further amended by revising subsection (c) of Code Section 33-41-19, relating
709 to rates, underwriting rules, and policy forms and notice on policies, as follows:

~~"(c) Each captive insurance company shall provide the following notice in ten-point type on the front page and declaration page on all policies and on the front page of all applications for policies:~~

~~"This captive insurance company is not subject to all of the insurance laws and regulations of the State of Georgia. State insurers insolvency guaranty funds are not available to the policyholders of this captive insurance company." Reserved."~~

SECTION 2-10.

Said title is further amended in Code Section 33-41-22, relating to taxation, by revising paragraphs (4) and (5) and adding new paragraphs to read as follows:

"(4) Two or more captive insurance companies under common ownership and control, other than sponsored captive insurance companies, shall be taxed as though they were a single captive insurance company. For the purposes of this Code section, the term 'common ownership and control' shall mean the direct or indirect ownership, control or hold with power to vote more than 50 percent of the outstanding voting securities or membership interests of two or more such captive insurance companies; and

(5) The tax provided for in paragraphs (1) and (2) of this Code section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax due; and

(6)(A) For purposes of this Code section, a protected cell, as defined in Article 2 of this chapter, shall be included in the definition of a 'captive insurance company.'

(B) The common ownership and control aggregation rules set forth in paragraph (4) of this Code section shall apply to each individual protected cell with respect to the participant or participants of such individual protected cell.

(C) Notwithstanding any other provision of this Code section, a sponsored captive insurance company shall be responsible for collecting and remitting taxes due from its protected cells.

(7) Every insured whose home state is Georgia and who procures or causes to be procured or continues or renews insurance with a captive insurance company domiciled outside of Georgia, other than reinsurance, shall within 30 days after the date such insurance was so procured, continued, or renewed file a report of the same with the Commissioner in writing upon designated forms. The report shall state the name and address of the insured or insureds, name and address of the captive insurance company domiciled outside of Georgia, the subject of the insurance, a general description of the coverage, the amount of premium currently paid thereon, and such additional information as reasonably requested by the Commissioner."

SECTION 2-11.

Said title is further amended by repealing Code Section 33-41-23, relating to rules and regulations, and enacting a new Code Section 33-41-23 to read as follows:

"33-41-23.

(a) A captive insurance company that meets the definition of a dormant captive insurance company set forth in this chapter may apply to the Commissioner for a certificate of dormancy on a form or forms as may be prescribed by the Commissioner.

(b) A dormant captive insurance company that has been issued a certificate of dormancy pursuant to this Code section shall:

(1) Possess and thereafter maintain unimpaired, paid-in-capital and surplus of at least \$25,000.00;

(2) Submit to the Commissioner a report of its financial condition on or before March 1 of each year on a form or in a manner as prescribed by the Commissioner;

(3) Renew such certificate every five years by submitting documentation as prescribed by the Commissioner and paying a renewal fee of \$500.00; and

(4) Be subject to an examination pursuant to Code Section 33-41-16 in the discretion of the Commissioner.

(c) A dormant captive insurance company that has been issued a certificate of dormancy pursuant to this Code section shall not:

(1) Be subject to or liable for the payment of any tax pursuant to Code Section 33-41-22; or

(2) Be required to submit any annual forms, fees, or documents that are otherwise required by this chapter, other than those required pursuant to this Code section.

(d) The Commissioner may, upon written request, declare a captive insurance company to be dormant for purposes of this Code section even if such captive insurance company retains liabilities associated with policies written or assumed, provided that such captive insurance company has otherwise ceased the transaction of insurance business. However, in this case, the Commissioner may, in his or her discretion, require such captive insurance company to possess and maintain unimpaired, paid-in-capital and surplus and reserves greater than that required by this Code section.

(e) A certificate of dormancy shall be revoked if a captive insurance company no longer meets the definition of a dormant captive insurance company or fails to meet the requirements as set forth in this Code section.

(f) A dormant captive insurance company shall apply to the Commissioner for approval and shall be granted such approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies and shall pay an application fee as prescribed by the Commissioner.

783 (g) Any provisions of this title which are inconsistent with the provisions of this Code
784 section shall not apply to dormant captive insurance companies."

785 **SECTION 2-12.**

786 Said title is further amended by repealing Code Section 33-41-24, relating to inapplicability
787 of inconsistent provisions, and enacting a new Code Section 33-41-24 to read as follows:

788 "33-41-24.

789 The Commissioner may adopt rules establishing standards to ensure that a pure captive
790 insurance company's parent or any of its affiliated companies is able to exercise control of
791 the risk management function of any controlled unaffiliated business to be insured by the
792 pure captive insurance company; provided, however, that, until such time as rules under
793 this Code section are adopted, the Commissioner may approve or deny the coverage of
794 such risks by a pure captive insurance company on a case by case basis."

795 **SECTION 2-13.**

796 Said title is further amended by adding new Code sections to read as follows:

797 "33-41-25.

798 The Commissioner may establish such rules and regulations and issue such interpretive
799 rulings as may be necessary to carry out the provisions of this chapter.

800 33-41-26.

801 Any provisions of this title which are inconsistent with the provisions of this chapter shall
802 not apply to captive insurance companies; provided, however, that pure and agency captive
803 insurance companies shall not be subject to the requirements of Chapter 13 of this title."

804 **SECTION 2-14.**

805 Said title is further amended in Chapter 41 by adding a new article to read as follows:

806 "ARTICLE 2

807 33-41-100.

808 In addition to the general provisions of Article 1 of this chapter, the provisions of this
809 article shall apply to sponsored captive insurance companies.

810 33-41-101.

811 As used in this article, the term:

(1) 'General account' means all the assets and liabilities of a sponsored captive insurance company that are not attributable to a protected cell.

(2) 'Incorporated protected cell' means a protected cell that is established as a stock corporation or manager-managed limited liability company separate from the sponsored captive insurance company of which it is a part.

(3) 'Participant' means a person, and any affiliates thereof, that is insured or reinsured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to such participant's protected cell assets or to the pro rata share of the assets of one or more protected cells that are identified in such participant contract.

(4) 'Participant contract' means a contract by which a sponsored captive insurance company insures or reinsures the risks of a participant, or the controlled unaffiliated business thereof, and limits the losses to the participant's protected cell assets or to the pro rata share of the assets of one or more protected cells that are identified in such participant contract.

(5) 'Protected cell' means a separate and distinct account or accounts established by a sponsored captive insurance company in which an identified pool of assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company insured or assumed on behalf of such participants as set forth in such participant contracts. A protected cell may be an incorporated protected cell or an unincorporated protected cell.

(6) 'Protected cell assets' means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell that may not be used to pay any expenses or claims other than those attributable to such protected cell.

(7) 'Protected cell liability' means all liabilities and other obligations identified with and attributable to a specific protected cell.

(8) 'Sponsor' means any person, other than a risk retention group, that is approved by the Commissioner, in the exercise of his or her sole discretion, to organize and operate a sponsored captive insurance company and to provide all or part of its required capital and surplus.

(9) 'Sponsored captive insurance company' means any domestic stock insurer or manager-managed limited liability company formed by one or more sponsors having been granted a certificate of authority pursuant to this chapter that:

(A) May only be owned by its participants and sponsors, unless the Commissioner has authorized the issuance of nonvoting securities to other persons:

(B) Maintains at least \$250,000.00 in capital and surplus subject to Code Section 33-41-8, which shall at all times be available to pay any expenses of or claims against it;

(C) May only insure or reinsure the risks of its participants, or the controlled unaffiliated business thereof, in accordance with separate participant contracts;

(D) Funds its liabilities to each participant through one or more protected cells and keeps the protected cell assets and protected cell liabilities of each protected cell segregated from the general account and from the protected cell assets and protected cell liabilities of other protected cells; and

(E) Establishes administrative and accounting procedures necessary to allocate, identify, separate, and segregate the protected cell assets, protected cell liabilities, insurance and reinsurance obligations, assets, credits, liabilities, losses, tax benefits and refunds attributable to the protected cells.

(10) 'Unincorporated protected cell' means a protected cell that is not itself a legal entity separate from the sponsored captive insurance company of which it is a part.

33-41-102.

(a) A sponsored captive insurance company may establish one or more protected cells if the Commissioner has approved in writing a business plan, or an amendment to such plan, with respect to each protected cell that includes information about the participant, the associated participant contract or contracts, and any other information requested by the Commissioner.

(b) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any current participant, or the termination of any existing protected cell shall constitute a change in the business plan of the sponsored captive insurance company and shall require the Commissioner's prior written approval.

(c) Each sponsored captive insurance company shall annually file with the Commissioner such financial reports as he or she shall require. Any such financial report shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(d) Each sponsored captive insurance company shall notify the Commissioner in writing within ten business days of any protected cell becoming insolvent or otherwise unable to meet its claim, expense, insurance, or reinsurance obligations.

33-41-103.

(a) A sponsored captive insurance company licensed under this chapter may establish and maintain one or more protected cells to insure or reinsure risks subject to the provisions, terms, and conditions set forth in this chapter, and it is the intent of the General Assembly to provide sponsored captive insurance companies with the option to establish one or more protected cells as incorporated protected cells without limiting any rights or protections applicable to unincorporated protected cells.

(b) The creation of a protected cell pursuant to this chapter does not create, with respect to such protected cell, a legal person separate from the sponsored captive insurance company of which it is a part unless such protected cell is an incorporated protected cell.

(c) In addition to the provisions required by subparagraphs (c)(1)(B) and (c)(1)(C) of Code Section 33-41-5, an incorporated protected cell must also include the following in its formation documents;

(1) A reference to the sponsored captive insurance company of which it will be a part; and

(2) A statement that the entity is a protected cell incorporated for the limited purposes authorized by the sponsored captive insurance company's certificate of authority.

(d) An incorporated protected cell shall not use any name that is either similar, misleading, or confusing with respect to any other name already in use by any other entity doing business in this state.

(e) An incorporated protected cell shall be entitled to enter into contracts and undertake obligations in its own name and for its own account unless prohibited by an applicable participant contract. In the case of a contract or obligation undertaken directly by an incorporated protected cell to which the sponsored captive insurance company is not a party, either in its own name and for its own account or on behalf of a protected cell, the counterparts to the contract or obligation shall have no right or recourse against the sponsored captive insurance company, any other protected cell not a party to such contract or obligation or any assets other than against assets properly attributable to the incorporated protected cell that is a party to the contract or obligation.

33-41-104.

(a) All attributions of assets and liabilities to the protected cells and the general account shall be made by the sponsored captive insurance company in accordance with the business plan and applicable participant contracts as approved by the Commissioner, and unless the sponsor consents and the Commissioner has granted prior written approval, the general account shall not be used to pay any expenses or claims attributed solely to a protected cell.

(b) When establishing a protected cell, the sponsored captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributable to such protected cell in cash or in readily marketable securities with established market value.

(c) Amounts attributable to a protected cell under this chapter are owned by the protected cell. No sponsored captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of such protected cell account. Notwithstanding this subsection, the sponsored captive insurance company may allow for a security interest to attach to protected cell assets when in favor of a creditor of the protected cell and otherwise allowable under applicable law.

(d) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect each protected cell's financial condition and results of operations, net income or loss, dividends or other distributions to participants, and such other factors regarding each protected cell as may be provided in the applicable participant contract or required by the Commissioner.

(e) The assets of a protected cell shall not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurance company generally.

(f) No sale, exchange, transfer of assets, dividend, or distribution, other than a transaction in accordance with the applicable participant contract, may be made with respect to a protected cell by or to a sponsored captive insurance company or participant without the Commissioner's written approval. In no event shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment of a protected cell.

(g) The remedy of tracing is applicable to protected cell assets if they are commingled with protected cell assets of other protected cells or the general account in violation of this article and any applicable participant contracts. The remedy of tracing shall not be construed as an exclusive remedy.

(h) The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell as set forth in the business plan and participant contracts approved by the Commissioner, which may include a tax allocation agreement to which the sponsored captive insurance company is a party.

(i) Notwithstanding any other provision of this chapter, the assets of two or more protected cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes.

(j) Notwithstanding any other provisions of this title, sponsored captive insurance companies shall not be subject to any restrictions on eligible investments whatever; however, the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any sponsored captive insurance company.

(k) If required by the Commissioner, in his or her discretion, the business written by a sponsored captive insurance company, with respect to each protected cell, shall be:

(1) Fronted by an insurance company licensed pursuant to the laws of any state;

(2) Reinsured by a reinsurer authorized or approved by the Commissioner; or

(3) Secured by a trust fund in the United States for the benefit of participants, policyholders, and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the Commissioner. The Commissioner, in his or her sole discretion, shall approve the form, terms, and funding amount of any trust, and may require the sponsored captive insurance company to increase the funding of any security arrangement established under this chapter. If the form of security is a letter of credit, the letter of credit must be in conformance with Code Section 33-41-9 and approved by the Commissioner.

33-41-105.

(a) In connection with the conservation, rehabilitation, or liquidation of captive insurance companies set forth in Code Section 33-41-21, including sponsored captive insurance companies, the assets and liabilities of a protected cell shall at all times be kept separate from, and shall not be commingled with, those of other protected cells and the sponsored captive insurance company except to the extent that the assets and liabilities of any one or more protected cells are determined to have not been allocated, segregated, and separated pursuant to the business plan and participant contracts approved by the Commissioner, and which are subject to the tracing provisions set forth in this article.

(b) Notwithstanding the provisions of this title, in the event of the insolvency of a sponsored captive insurance company where the Commissioner determines that one or more protected cells remain solvent, the Commissioner may separate such cells from the sponsored captive insurance company and may allow, on application of the sponsored captive insurance company or participant, for the conversion of such protected cells into one or more new or existing other captive insurance companies.

33-41-106.

All provisions set forth in subsection (c) of Code Section 33-41-16 shall also apply to sponsored captive insurance companies in the same manner."

SECTION 2-15.

Said title is further amended by revising subsection (c) of Code Section 33-1-17, relating to the Special Insurance Fraud Fund, as follows:

"(c)(1) The Commissioner shall prepare, on an annual basis, a separate budget request to the General Assembly which sets forth the anticipated cost and expense of funding the investigation and prosecution of insurance fraud in this state for the ensuing 12 months. Beginning with the year 1997, such budget request shall set forth the annual cost and expense of the investigation and prosecution of insurance fraud in Georgia for the preceding 12 months.

(2) There is imposed upon each foreign, alien, and domestic insurance company doing business in the state an annual assessment under a formula to be established by regulation promulgated by the Commissioner. The formula shall be calculated such that the total proceeds paid or collected from such assessments for any year shall not exceed the amounts appropriated by the General Assembly pursuant to paragraph (3) of this subsection, which appropriation shall be based upon the budget request setting forth the applicable annual cost and expense of the investigation and prosecution of insurance fraud in Georgia submitted by the Commissioner. Such assessments may be measured by kind of company, kind of insurance, income, volume of transactions, or such other factors as the Commissioner determines appropriate. Assessments shall be due and payable for each calendar quarter at the times specified in subsection (b) of Code Section 33-8-6. Any insurance company which fails to report and pay any installment of such assessment shall be subject to penalties and interest as provided by subsection (d) of Code Section 33-8-6. The Commissioner shall provide by regulation for such other terms and conditions for the payment or collection of such assessments as may be necessary to ensure the proper payment and collection thereof. Notwithstanding the foregoing, the provisions of this Code section shall not apply to an agency captive insurance company, dormant captive insurance company, industrial insured captive insurance company, sponsored captive insurance company (including a protected cell thereof), or pure captive insurance company.

(3) The General Assembly may appropriate to the Insurance Department funds for the investigation of insurance fraud and for the funding of the prosecution of insurance fraud. The Commissioner is authorized to use such funds for investigation of insurance fraud and to reimburse prosecuting attorneys for some or all of the costs of retaining assistant prosecuting attorneys to prosecute insurance fraud cases. The Commissioner shall provide by regulation for such other terms and conditions for the use of the funds for the investigation, reimbursement, and prosecution contemplated by the terms of this paragraph."

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PART III

SECTION 3-1.

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All laws and parts of laws in conflict with this Act are repealed.